

JUSTICE FOR VICTIMS OF TORTURE AND TERRORISM
ACT

SEPTEMBER 15, 2008.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 5167]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5167) to amend the National Defense Authorization Act for Fiscal Year 2008 to remove the authority of the President to waive certain provisions, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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THE AMENDMENTS

The amendments are as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Justice for Victims of Torture and Terrorism Act”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) During the Gulf War against Iraq in 1991, Americans serving in the United States Armed Forces were captured, became Prisoners of War (POWs), and were subsequently tortured, beaten, starved, hooked to electrical shock devices, and subjected to other horrendous acts by Saddam Hussein’s regime.

(2) CBS News reporter Bob Simon and cameraman Roberto Alvarez were kidnapped while on assignment during the 1991 Gulf War and were held and tortured, along with the American POWs.

(3) Following the Iraqi invasion of Kuwait in August 1990, many United States citizens were detained by Iraq, beaten, subjected to cruel, inhumane and degrading treatment, confined under deplorable conditions, and used as “human shields” for the avowed purpose of preventing the United States and its coalition allies from using military force to liberate Kuwait.

(4) At the time these acts occurred, the Department of State had classified Iraq as a state sponsor of terrorism.

(5) The brave American POWs and American civilian hostages have suffered long-term physical, emotional, and mental damage as a result of this brutal, state-sponsored torture and terrorism.

(6) When the American POWs returned home after the Gulf War ended, they were given a hero’s welcome by then Secretary of Defense Dick Cheney, who told them, “Your country is opening its arms to greet you”.

(7) During the Gulf War, the Congress unanimously passed resolutions condemning the brutal treatment by the Government of Iraq of captured United States service members, demanding that the Government of Iraq abide by the Geneva Convention regarding the treatment of prisoners of war, and stating an intention to hold Iraq accountable for the torture of American POWs.

(8) In 1996, Congress passed an amendment to the Foreign Sovereign Immunities Act (FSIA) provisions of title 28, United States Code, so that torture victims like the American POWs and the American “human shield” victims from the Gulf War could seek compensation for their injuries from terrorist countries, including Iraq.

(9) On April 4, 2002, 17 Gulf War POWs and their families filed claims in the United States District Court for the District of Columbia seeking compensation for damages related to their torture and abuse by the Government of Iraq. The POWs included Colonel Clifford Acree, USMC (Ret.); Lieutenant Colonel Craig Berryman, USMC (Ret.); Former Staff Sergeant Troy Dunlap, US Army; Colonel David Eberly, USAF (Ret.); Lieutenant Colonel Jeffrey D. Fox, USAF (Ret.); Chief Warrant Officer 5 Guy Hunter, USMC (Ret.); Sergeant David Lockett, US Army; Colonel H. Michael Roberts, USAF; Colonel Russell Sanborn, USMC; Captain Lawrence Randolph Slade, USN (Ret.); Major Joseph Small, USMC (Ret.); Staff Sergeant Daniel Stamaris, US Army (Ret.); Lieutenant Colonel Richard Dale Storr, Air National Guard; Lieutenant Colonel Robert Sweet, USAF; Lieutenant Colonel Jeffrey Tice, USAF (Ret.); Former Lieutenant Robert Wetzell, USN; and Former Commander Jeffrey Zaun, USN.

(10) In 2003, after the Government of Iraq repeatedly refused to participate in arbitration on the damage claims, and after hearing evidence of how the former POWs had been repeatedly tortured, a judge awarded them a judgment for damages, stating that “detering torture of POWs should be of the highest priority”.

(11) Despite this ruling, the POWs and their families have not received payment, and are unable to further pursue their claims in United States courts because of the waiver that was granted for Iraq by the President under authority established in the National Defense Authorization Act for Fiscal Year 2008.

(12) In December 2001, after conducting an evidentiary hearing, the United States district court held, in *Hill v. Republic of Iraq*, that Iraq was liable for having taken United States citizens hostage following the Iraqi invasion of Kuwait and subsequently awarded 180 of those former hostages and their spouses a judgment for damages.

(13) On March 20, 2003, on the eve of Operation Iraqi Freedom, the President of the United States directed that all of the judgments that had been awarded in *Hill v. Republic of Iraq* be paid from moneys held in blocked Iraqi accounts.

(14) On that same date, the President issued an Executive order confiscating all remaining blocked assets of Iraq and ordering them to be deposited into the United States Treasury to be used for Iraq reconstruction.

(15) The claims of more than 200 United States citizens who, at the same time and in the same manner as the *Hill* plaintiffs, were held hostage in territory occupied by Iraq are currently pending in a United States district court in the case of *Vine v. Republic of Iraq*.

(16) The plaintiffs in *Vine v. Republic of Iraq* have not been compensated and are unable to enforce any judgment they may obtain in United States courts because of the waiver that was granted for Iraq by the President under authority established in the National Defense Authorization Act for Fiscal Year 2008.

(17) Article 131 of the Third Geneva Convention relative to the Treatment of Prisoners of War (August 12, 1949) prohibits the United States as a party to that treaty from absolving the Government of Iraq of any liability incurred due to the torture of prisoners of war, such as the American POWs referred to in this section.

(18) The United States has a moral obligation to protect its past, present, and future members of its Armed Forces, and all United States citizens, from torture and hostage-taking, and the Congress is committed to holding state sponsors of terrorism accountable for such horrendous acts.

SEC. 3. RESOLUTION OF CERTAIN CLAIMS AGAINST IRAQ.

(a) RESOLUTION BY IRAQ OF CERTAIN CLAIMS.—

(1) IN GENERAL.—Unless the President, before the end of the 90-day period beginning on the date described in paragraph (2)(A), certifies to the Congress that the Government of Iraq has adequately settled the claims in the cases referred to in subsection (b), then, upon the expiration of that 90-day period, the waiver authority granted to the President in section 1083(d) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 343), and any waiver granted before the end of that 90-day period under such authority, shall terminate.

(2) DATE DESCRIBED.—

(A) IN GENERAL.—The date described in this paragraph is—

(i) 30 days after the date of the enactment of this Act, unless the President has certified to the Congress, before the end of that 30-day period, that—

(I) the Government of Iraq has not, before, on, or after the enactment of this Act, compensated any foreign persons or entities for claims or liabilities incurred by or under the control of the Saddam Hussein regime, including, but not limited to, commercial or financial claims, and claims for acts against individuals similar to those described in section 1605A(a)(1) of title 28, United States Code; or

(II) negotiations are ongoing with the Government of Iraq to settle the claims in the cases referred to in subsection (b), and the President believes that those negotiations are being conducted in good faith and could lead to a satisfactory settlement of those claims; or

(ii) if a certification is made under clause (i), the day after the date on which that certification terminates or, if a subsequent certification is in effect under subparagraph (B), the day after the date on which the last such certification terminates.

(B) DURATION OF CERTIFICATIONS.—A certification under subclause (I) or (II) of subparagraph (A)(i) terminates 180 days after it is made. The President may make subsequent certifications under subclause (I) or (II) of subparagraph (A)(i) for periods of not more than 180 days each.

(b) CASES.—The cases referred to in subsection (a)(1) are cases numbered 99:00CV03346 (TPJ), 1:01CV02674 (HHK), CIV.A. 02-632 (RWR) (July 7, 2003), 1:03CV00691 (HHK), and 1:03CV00888 (HHK), in the United States District Court for the District of Columbia.

(c) ADEQUATE SETTLEMENT.—For purposes of subsection (a)(1), adequate settlement means payment by the Government of Iraq of, or an unqualified and unconditional guarantee made by a United States depository institution to pay within 30 days after the end of the 90-day period described in subsection (a)(1), at least the following amounts to the following persons:

(1) To any person—

(A) whose claim in the applicable case referred to in subsection (b) arose from an act of hostage taking or from being held in hostage status, and

(B) who has not obtained a judgment on the claim before the date of the enactment of this Act,
\$150,000, plus \$6,000 for each day the person was held as a hostage, but in no event more than \$900,000.

(2) To any person—

(A) whose claim in the applicable case referred to in subsection (b) arose from an act of hostage taking or from being held in hostage status,

(B) who, while a hostage, was subjected to torture, and

(C) who has not obtained a judgment on the claim before the date of the enactment of this Act,

\$2,500,000, plus \$6,000 for each day the person was held as a hostage.

(3) To a plaintiff in the applicable case referred to in subsection (b) who is the spouse or child of any person who qualifies for receipt of payment under paragraph (1) or (2), one third of the amount that such person qualifies for receipt under such paragraph.

(4) To any person who, before the date of the enactment of this Act, obtained a judgment for compensatory damages in a case referred to in subsection (b) (regardless of whether such judgment was subsequently vacated)—

(A) payment of the unsatisfied amount of such judgment, in an amount that is the lesser of \$1,000,000 or the unsatisfied amount of the award; and

(B) if the amount of the judgment exceeds \$1,000,000, one third of the unsatisfied amount of such excess.

(d) **ADDITIONAL CONDITION IN CASE OF GUARANTEE OF PAYMENT.**—If the claims in the cases referred to in subsection (b) are adequately settled for purposes of subsection (a)(1) because of a guarantee of payment by a depository institution within the 30-day period specified in subsection (c), and such payment is not made within that 30-day period, then upon the expiration of that 30-day period, the waiver authority described in subsection (a)(1), and any waiver granted before the end of that 30-day period under such authority, shall terminate.

(e) **DEFINITIONS.**—In this section:

(1) **FOREIGN PERSON OR ENTITY.**—The term “foreign person or entity” means—

(A) an individual other than a national of the United States; and

(B) a person or entity, other than an individual, that is organized under the laws of a country other than the United States.

(2) **HOSTAGE.**—The term “hostage” means an individual in hostage status or an individual seized or detained in the commission of an act of hostage taking.

(3) **HOSTAGE STATUS.**—The term “hostage status” has the meaning given that term in section 599C(d)(1) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101-513).

(4) **HOSTAGE TAKING.**—The term “hostage taking” has the meaning given that term in section 1605A(h)(2) of title 28, United States Code.

(5) **NATIONAL OF THE UNITED STATES.**—The term “national of the United States” has the meaning given that term in section 1605A(h)(5) of title 28, United States Code.

(6) **TORTURE.**—The term “torture” has the meaning given that term in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).

(7) **UNITED STATES.**—The term “United States” means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(8) **UNITED STATES DEPOSITORY INSTITUTION.**—The term “United States depository institution” means a depository institution organized under the laws of any State, the District of Columbia, or the United States, including a branch or agency of a foreign depository institution.

SEC. 4. LIMITATION ON CERTAIN CLAIMS.

No funds of the United States Government may be used to pay any claim—

(1) that is cognizable under section 1605A of title 28, United States Code, as added by section 1083 of the National Defense Authorization Act for Fiscal Year 2008, for money damages against Iraq for personal injury or death that was caused by acts committed by an official, officer, or employee of the Iraqi Government under Saddam Hussein; and

(2) with respect to which the waiver authority under section 1083(d) of the National Defense Authorization Act for Fiscal Year 2008 has been or may be exercised.

Amend the title so as to read:

A bill to terminate the authority of the President to waive, with regard to Iraq, certain provisions under the National Defense Authorization Act for Fiscal Year 2008 unless certain conditions are met.

PURPOSE AND SUMMARY

H.R. 5167, the “Justice for Victims of Torture and Terrorism Act,” would enable American POWs and civilians to hold the Government of Iraq liable for the physical and emotional injuries they sustained while held captive by Iraqi officials during the Gulf War. Unlike previous legislative proposals to compensate these victims, this bill would allow them to recover only a portion of the judgments rendered or claims made.

BACKGROUND AND NEED FOR THE LEGISLATION

THE AMERICAN VICTIMS

This legislation addresses two groups of Americans who suffered at the hands of the Government of Iraq during the 1991 Gulf War, when it was a designated foreign state sponsor of terrorism.

The first is a group of 17 prisoners of war (POWs) who were part of the international coalition led by the U.S. which initiated military action against Iraq on January 16, 1991, after Iraq attacked and occupied Kuwait. All but one of these POWs were pilots in aircraft downed over Iraq or Kuwait.

Believing these POWs to be in possession of sensitive military information, the Iraqi government targeted them for particularly brutal treatment. They were beaten, threatened with castration and dismemberment, subjected to mock executions, and shocked with electrical devices. They were also starved, denied sleep, and exposed to extreme temperatures. They were denied medical care, intentionally further aggravating serious physical injuries that included broken bones, perforated eardrums, nerve damage, infections, nausea, and severe weight loss. The POWs and 37 of their immediate family members are plaintiffs in *Acree v. Republic of Iraq*.¹

The second group comprises 237 civilians who were working in Iraq and Kuwait during the period leading up to the Gulf War. Shortly after Iraqi armed forces invaded Kuwait on August 2, 1990, Saddam Hussein issued a directive prohibiting foreign nationals from leaving the region. On August 19, 1990, President George H.W. Bush declared all U.S. citizens in Kuwait and Iraq to be hostages, held by Saddam as “human shields” to make it more difficult for the U.S. and its allies to push back Iraq and liberate Kuwait.

These hostages were held in “harsh, cruel, degrading, and often terrorizing” conditions.² They “lived in constant fear for their lives and suffered from fatigue, depression, severe anxiety and stress.”³ Some were also subjected to more severe forms of physical torture. They were eventually released by Hussein in December 1990. They are plaintiffs in *Vine v. Republic of Iraq*⁴ and *Hill v. Republic of Iraq*.⁵

THE FOREIGN SOVEREIGN IMMUNITIES ACT

Under international law, sovereign nations have generally been immune from liability in the courts of other nations, in recognition

¹ *Acree v. Republic of Iraq*, 276 F. Supp. 2d 95 (D.D.C. 2003).

² *Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (2006).

³ *Id.*

⁴ *Id.*

⁵ *Hill v. Republic of Iraq*, 2003 U.S. Dist. LEXIS 3725 (D.D.C. 2003).

of the independence of each nation. As the level of international interactions has increased, the principle of absolute sovereign immunity has been gradually modified. This evolving principle is reflected in the Foreign Sovereign Immunities Act of 1978 (“FSIA”), P.L. 94–538, which provides that a foreign state is immune from the jurisdiction of U.S. courts, with specified exceptions.

The Anti-Terrorism and Effective Death Penalty Act of 1996 added an exception to allow U.S. victims of a terrorist act such as torture, extrajudicial killing, or hostage taking to bring civil suit against a foreign state responsible for the act, if the foreign state is designated as a state sponsor of terrorism by the State Department at the time the act occurred, or is later so designated because of the act.⁶ It also allowed the commercial property of a foreign state in the U.S. to be attached in satisfaction of a judgment, regardless of whether the property was involved in the act on which the claim was based.⁷

In 1998, after a court held that the exception to sovereign immunity did not in and of itself create a private right of action,⁸ Congress passed the “Flatow Amendment” to clarify that a cause of action existed against the officials, employees, and agents of foreign states who commit the terrorist act “while acting within the scope of” their employment if a U.S. government official would be liable for similar actions.⁹ Section 201 of the Terrorism Risk Insurance Act, enacted in 2002,¹⁰ reaffirmed that, and broadened the circumstances under which, frozen assets of terrorist states are available to judgment holders for compensatory damages.

Courts initially interpreted the Flatow Amendment as creating a cause of action against a foreign state, as well as against its agencies and instrumentalities, despite the fact that the statute referred only to officials, employees, and agents of foreign states. In 2004, however, the D.C. Circuit held that neither the terrorism exception to FSIA nor the Flatow Amendment created a private right of action against the foreign state or its agencies and instrumentalities.

In response, victims have turned to U.S. State laws, obtaining judgments totaling almost \$18 billion in damages, most of them against Iraq. Victims have had difficulty enforcing these judgments, however, due to the scarcity of assets in the U.S. belonging to the foreign state defendants, and by Executive Branch actions immunizing these assets from attachment.

While Congress has supported giving terrorism victims the right to obtain relief and to enforce judgments, the Executive Branch has been less supportive. Both the Clinton and Bush Administrations have opposed allowing the use of frozen assets of foreign states to satisfy judgments, variously citing treaty obligations to protect foreign diplomatic and consular properties, a desire to maintain the frozen assets for diplomatic leverage, and the fear that allowing the attachment of frozen assets would subject U.S. assets in foreign states to similar treatment.

⁶P.L. 104–132, Title II, § 221 (April 23, 1996); 110 Stat. 1241; 28 U.S.C. § 1605(a)(7).

⁷28 U.S.C. 1610(b)(2).

⁸Flatow v. Islamic Republic of Iran, 999 F. Supp. 1 (D.D.C. 1998).

⁹P.L. 104–208, Title I, § 101(c) (Sept. 30, 1996), 110 Stat. 3009–172; codified at 28 U.S.C. § 1605 note.

¹⁰P.L. 107–297 (November 26, 2002), 116 Stat. 2322.

ACTIONS BY PRESIDENT BUSH IN 2003 TO EXEMPT IRAQ FROM
JUDGMENTS

In conjunction with the 2003 war against Iraq, President Bush took a series of actions that, in combination, had the effect of making Iraq's assets in the U.S. unavailable to terrorism victims who, after March 20, 2003, obtained terrorism-related judgments against Iraq.

On March 20, 2003, as the war began, President Bush issued an executive order placing those assets—then totaling approximately \$1.73 billion—which had previously been frozen, into a dedicated Development Fund for Iraq, to be used in the post-war reconstruction of Iraq.¹¹

Six weeks later, on May 7, he declared, based on general authority Congress had recently granted him to exempt Iraq from laws governing terrorist-supporting states,¹² that neither the terrorism exception to FSIA nor section 201 of the Terrorism Risk Insurance Act would apply to Iraq.¹³

Two weeks later, on May 22, he issued another executive order, prohibiting attachment of any assets in the Development Fund for Iraq.¹⁴

EFFECT OF 2003 PRESIDENTIAL ACTIONS ON LAWSUITS AGAINST IRAQ

The POW and human shield victims have brought the following Federal lawsuits:

Acree v. Republic of Iraq (POWs): The 17 Gulf War POWs—many of whom had returned to active duty following their release from captivity—and their immediate families filed suit in April 2002. They obtained a default judgment in July 2003. The district court awarded them and their families \$653 million in compensatory damages and \$306 million in punitive damages. The Department of Justice then sought to intervene in the case, arguing that Iraq's sovereign immunity had been restored by presidential determination pursuant to authority granted by Congress.

The district court denied the Government's motion to intervene, but ruled that the presidential determination precluded the plaintiffs from enforcing their judgment against the \$1.73 billion in frozen Iraqi assets that had been confiscated pursuant to the President's March 2003 executive order.¹⁵ The court of appeals later vacated the default judgment, holding that the plaintiffs had failed to state a cause of action against Iraq. Although the terrorism exception to the FSIA, combined with the Flatow Amendment, created a private right of action against officials, employees, and agents of a foreign government for their private conduct, the court held, it did not create a cause of action against the foreign government itself, including its agencies and instrumentalities in their official capacity.

¹¹ E.O. 13290, 68 Fed. Reg. 14,305–08 (March 24, 2003). Assets that had previously been ordered attached in satisfaction of judgments against Iraq were excluded from the Executive Order, as was Iraq's diplomatic and consular property.

¹² Emergency Wartime Supplemental Appropriations Act for FY2003, P.L. 108–11, § 1503 (April 16, 2003).

¹³ Memorandum for the Secretary of State (Presidential Determination No. 2003–23) (May 7, 2003), 68 Fed. Reg. 26459 (May 7, 2003).

¹⁴ E.O. 13303, 68 Fed. Reg. 31, 931 (May 28, 2003).

¹⁵ E.O. 13290, 68 Fed. Reg. 14,305–08 (March 24, 2003).

In 2005, plaintiffs filed a Rule 60(b) motion asking the court to consider further argument regarding the causes of action that plaintiffs had pled under State law but were not considered in the court's previous ruling. The court denied the motion in July 2008. Plaintiffs have filed a notice of appeal, and the case remains pending.

Hill v. Republic of Iraq (human shields): This Federal case was filed in December 1999 by 180 U.S. civilians who had been held by the Iraqi government as human shields after the invasion of Kuwait in 1990. In December 2001, they obtained a default judgment and were awarded more than \$94 million in compensatory damages. They received full payment. In March 2004, 24 of them obtained increases in their judgments to reflect lost property. These 24 now seek payment of the remainder of their judgments, totaling approximately \$70 million.

Vine v. Republic of Iraq (human shields): This case involves 237 human shields and their families who were unable to join the *Hill* case for technical reasons. They filed suit in December 2001. Although their claims are identical to those of the *Hill* plaintiffs, they have not been awarded a judgment in their favor because the 2003 presidential order—issued after the *Hill* ruling—blocked their case. The case has been temporarily suspended.

Simon v. Republic of Iraq (human shields): This case involves CBS News reporter Bob Simon and CBS cameraman Roberto Alvarez, who were kidnapped in January 1991, while on assignment during the Gulf War and held and tortured along with the U.S. POWs in Acree. They were released in March 1991. Their case was filed in March 2003. The district court, stating that the statute of limitations had run, dismissed the case. The court of appeals reversed the dismissal, stating that the claim was timely. The appellate court also rejected Iraq's argument that the President had the authority to waive all claims against Iraq, thereby removing U.S. courts' jurisdiction over pending claims, under the FY08 NDAA. Iraq is now seeking Supreme Court review.

Seyam v. Republic of Iraq (human shield): This case involves Nabil Seyam, a U.S. national who was working as a safety engineer for the Kuwait Metal Pipe Industries Company prior to the Gulf War. After hiding from Iraqi forces for 2 months, he was taken hostage and tortured by Iraqi soldiers before being released in October 1990. Mr. Seyam filed suit in April 2003. He was killed in a car accident in 2006, and his estate is pursuing his case. The district court consolidated the *Seyam* case with the *Simon* case. It was therefore dismissed along with *Simon*, on the same grounds that the statute of limitations had run. The appellate court then reversed the dismissal. Iraq has moved for a stay pending Supreme Court review in *Simon*.

SECTION 1083 OF THE FY08 NATIONAL DEFENSE AUTHORIZATION ACT

Section 1083 of the FY2008 National Defense Authorization Act ("FY08 NDAA"), P.L. 110–181, amends the Foreign Sovereign Immunities Act of 1978 to enable victims whose claims were dismissed for lack of a Federal cause of action to re-file their claims under new 28 U.S.C. § 1605A, a new FSIA terrorism exception and explicit cause of action against terrorist states. Section 1083 also

facilitates victims' efforts to enforce judgments by attaching a defendant state's assets.

Section 1083 also states, in subsection (c)(4), that the general authority Congress conferred on the President in 2003 has never authorized, directly or indirectly, making any provision of FSIA inapplicable to Iraq or removing U.S. court jurisdiction.

President Bush vetoed the FY08 NDAA, solely on the basis of section 1083. Asserting that the section as originally drafted would jeopardize Iraq's economic development and security, he insisted that it be rewritten to give him authority to waive it with respect to Iraq, retroactively as to all pending cases, if he determined that a waiver would serve the United States' national security interest, promote U.S.-Iraq relations, and facilitate reconstruction and political development in Iraq, and that Iraq continued to be a reliable ally and partner in combating terrorism. Congress passed the revised version of the FY08 NDAA, and the President signed it into law January 28, 2008,¹⁶ exercising his waiver authority that very day.¹⁷

EFFECT OF PRESIDENTIAL WAIVER ON LAWSUITS

The 2008 waiver effectively bars the refiling of the Acree lawsuit and, therefore, any relief for the POWs and their families. The other pending suits against Iraq would all appear to be subject to dismissal as a result of the waiver.

Anticipating the detrimental impact a waiver would have on pending suits, Congress inserted a provision in Section 1083 urging the President to work with the Iraqi government to help the American victims of Iraqi terrorism during the Gulf War obtain relief for the emotional and physical injuries they sustained. To date, the President has not indicated to Congress that any efforts have been made to do so.

H.R. 5167

Representatives Bruce Braley (D-IA) and Joe Sestak (D-PA) responded to the veto and revision of section 1083 by introducing legislation to facilitate the settlement of the claims against Iraq. Under the legislation, developed in close consultation with the victims, the POWs would agree to forego punitive damages and two-thirds of the compensatory damages awarded, and the human shields to forego all punitive damages. Iraq would be required to pay approximately \$415 million.

The amount of recovery sought is de minimus relative to the \$20–\$32 billion in commercial claims that Iraq has reportedly settled with Mitsubishi of Japan and Hyundai of Korea. It amounts to perhaps 1 percent of the Iraqi government assets held in U.S. banks.

HEARINGS

The Committee on the Judiciary held an oversight hearing on "Ensuring Legal Redress for American Victims of State-Sponsored

¹⁶P.L. 110–181, § 1083(d).

¹⁷White House Memorandum of Justification for Waiver of Section 1083 of the National Defense Authorization Act (January 28, 2008), available at [<http://www.whitehouse.gov/news/releases/2008/01/20080128-12.html>].

Terrorism” on June 17, 2008. Testimony was received from the Honorable Bruce Braley; the Honorable Joe Sestak; John Norton Moore, co-counsel, *Acree v. Republic of Iraq*; Larry Slade, plaintiff, *Acree v. Republic of Iraq*; Daniel Wolf, counsel, *Vine v. Republic of Iraq*; and George Charchalis, plaintiff, *Vine v. Republic of Iraq*. The Departments of State and Justice were invited, but declined to appear. The purpose of the hearing was to examine the nature of the harms underlying the claims pending against Iraq by the U.S. prisoners of war and civilians, and the proposal by Rep. Braley and Rep. Sestak to facilitate the settlement of those claims.

COMMITTEE CONSIDERATION

On July 30, 2008, the full Committee met in open session and ordered the bill H.R. 5167 favorably reported, with an amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee’s consideration of H.R. 5167.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 5167, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 9, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5167, the Justice for Victims of Torture and Terrorism Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte, who can be reached at 226-2840.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 5167—Justice for Victims of Torture and Terrorism Act.

H.R. 5167 would, under certain conditions, rescind the President's authority to exempt Iraq from the jurisdiction of U.S. courts in cases related to acts of terrorism, hostage-taking, or torture. CBO estimates that enacting H.R. 5167 would have no significant effects on the Federal budget.

Most foreign states that have been designated as state sponsors of terrorism have no immunity from the jurisdiction of U.S. courts in cases filed by U.S. nationals, members of the armed forces, or Federal employees seeking compensation for state-sponsored acts of terrorism, hostage-taking, or torture. However, the President is authorized to provide such immunity to Iraq on the basis of national security.

Unless the President certifies that Iraq has adequately settled, or is making good-faith negotiations to settle, claims against it from pending court cases, H.R. 5167 would rescind that authority, thereby permitting the administrative expenses of special masters appointed for claims against Iraq to be paid from the Crime Victims fund. We estimate that direct spending, if any, from the fund would be insignificant because of the small number of cases likely to be affected.

H.R. 5167 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Sunita D'Monte, who can be reached at 226-2840, and Mark Grabowicz, who can be reached at 226-2860. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states, pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that H.R. 5167 is intended to ensure fair redress to the American POWs and civilians who were brutalized at the hands of the Iraqi government during the Gulf War.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5167 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title. This section sets forth the short title of the bill as the “Justice for Victims of Torture and Terrorism Act.”

Sec. 2. Findings. This section contains findings related to the history of this issue.

Sec. 3. Resolution of Certain Claims Against Iraq.

Section 3(a). Resolution by Iraq of Certain Claims. This subsection provides for the termination of the presidential waiver authority granted in section 1083 of the FY08 NDAA unless the President certifies to Congress that Iraq has “adequately settled” the cases listed in section 3(b) before the expiration of the 90-day period beginning 30 days after the bill’s enactment, unless the President certifies to Congress, before the end of that 30-day period, that:

- the Government of Iraq has not settled foreign commercial debts or claims by foreign persons or entities similar to the claims brought in those cases;
- there are ongoing good-faith negotiations with the Government of Iraq to settle the claims brought in those cases.

Certifications made under subsection (a) terminate after 180 days, but can be renewed for additional 180-day periods.

Section 3(b). Cases. This subsection provides that the cases referenced in Sec. 3(a) are the Acree, Hill, Vine, Simon, Alvarez, and Seyam cases.

Section 3(c). Adequate Settlement. This subsection defines “adequate settlement” as payment by Iraq, or an unconditional guarantee made by a U.S. depository institution to make payment from Iraqi funds within 30 days after the end of the 90-day period described in subsection (a), to specified classes of victims under specified terms:

- to any person who was held hostage but not subjected to torture, and who has not obtained a judgment on the claim, \$150,000 plus \$6,000 for each day held as a hostage, but not to exceed a total of \$900,000.
- to any person who was held hostage and subjected to torture, and who has not obtained a judgment on the claim, at least \$2,500,000 plus \$6,000 per day for each day held as a hostage.
- to a spouse or child of any person who qualifies for compensation above, one-third of the amount which the person who so qualifies is entitled to receive.
- to any person who obtained a judgment for compensatory damages in one of the aforementioned cases (regardless of whether it was later vacated), the unsatisfied amount of that judgment up to \$1,000,000, plus one-third of any unsatisfied amount in excess of \$1,000,000.

Sec. 3(d). Additional Condition in Case of Guarantee of Payment. This subsection provides that if claims in the specified cases are settled by guarantee of payment by a U.S. depository institution to pay within 30 days, and the payment is not actually made within that period, the presidential waiver authority granted in the FY08 NDAA will terminate.

Sec. 3(e). Definitions. This section contains definitions of “foreign person or entity,” “hostage,” “hostage status,” “hostage taking,” “torture,” “United States,” and “United States Depository Institution.”

Sec. 4. Limitation on Certain Claims. This section prohibits any funds belonging to the United States Government from being used to pay any claim covered under this Act.

